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STATUTORY INSTRUMENTS

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**2009 No. 1059**

**The Armed Forces Act 2006  
(Transitional Provisions etc) Order 2009**

**PART 15**

**APPEALS AND REFERENCES TO THE COURT MARTIAL APPEAL COURT**

**Review of unduly lenient sentence for SDA offence**

**129.**—(1) Where, immediately before commencement, a reference has been made under section 113C(1) of AA 1955 or AFA 1955 or section 71AC(1) of NDA 1957 (review of unduly lenient sentence by Appeal Court) but the Appeal Court has not concluded its review of the case, the reference has effect after commencement as a reference under section 273(1) of AFA 2006.

(2) In section 273(1)(a) of AFA 2006—

(a) the reference to a sentence passed by the Court Martial—

(i) includes a sentence passed by a court-martial;

(ii) does not include a sentence passed on an appeal under paragraph 18 of Schedule 3 to AFA 1976 or by virtue of article 134 (appeal from Standing Civilian Court);

(b) the reference to an offence under section 42 of AFA 2006 includes an SDA civil offence.

(3) In relation to a sentence passed by the Court Martial in respect of an SDA civil offence, the reference in section 273(2) of AFA 2006 to the corresponding offence under the law of England and Wales is to be read as a reference to the corresponding civil offence.

(4) In relation to a sentence passed by a court-martial, section 273(1) of AFA 2006 has effect as if for paragraph (b) there were substituted—

“(b) that section 113C of the Army Act 1955 (c. 18) or the Air Force Act 1955 (c. 19) or section 71AC of the Naval Discipline Act 1957 (c. 53) applied to the case,”; and section 273(2) and (3) of AFA 2006 do not apply.

(5) For the purposes of section 273(1)(a) of AFA 2006, the Attorney General may consider that a sentence passed by the Court Martial is unduly lenient if he considers that the sentence is not that required by article 89 (sentences required by SDAs); but this paragraph is without prejudice to section 273(6) of AFA 2006, and nothing in it limits section 273(1)(a).

(6) For the purposes of section 273(1)(a) of AFA 2006, the Attorney General may consider that a sentence passed by a court-martial is unduly lenient if he considers—

(a) that the court-martial erred in law as to its powers of sentencing; or

(b) that the sentence is not that required by section 70(3A) of AA 1955 or AFA 1955 or section 42(1A) of NDA 1957;

but nothing in this paragraph limits section 273(1)(a) of AFA 2006.

(7) Where, immediately before commencement, leave for a reference has been granted under section 113C(1) of AA 1955 or AFA 1955 or section 71AC(1) of NDA 1957 but the reference has

not been made, the leave has effect after commencement as leave granted under section 273(4) of AFA 2006.

(8) Paragraphs (9) to (11) apply, and section 273(5) of AFA 2006 does not apply, on a reference under section 273(1) of that Act of a case in which sentence was passed by a court-martial (including a reference which by virtue of paragraph (1) above has effect as a reference under that subsection).

(9) If the court-martial passed sentence in respect of one offence, article 117(2) applies as if the reference were an appeal against the sentence; but article 117(6) does not apply.

(10) If the court-martial passed one sentence in respect of two or more offences, article 117(3) applies as if the reference were an appeal against the sentence; but article 117(6) does not apply.

(11) If the court-martial passed two or more sentences, article 117(4) applies as if the reference were an appeal against the sentences; but article 117(6) does not apply.

(12) On—

- (a) a reference which by virtue of paragraph (1) has effect as a reference under section 273(1) of AFA 2006, or
- (b) a reference under that subsection of a case in which sentence was passed by a court-martial, where the Attorney General applied for leave to refer the case under section 113C(1) of AA 1955 or AFA 1955 or section 71AC(1) of NDA 1957 before commencement,

section 273(7) of AFA 2006 <sup>M1</sup> applies as enacted.

(13) In section 274(1) of AFA 2006 (reference of point of law to Supreme Court), the reference to a case referred to the Appeal Court under section 273(1) of that Act includes a case referred to the Appeal Court under section 113C(1) of AA 1955 or AFA 1955 or section 71AC(1) of NDA 1957.

(14) Where—

- (a) a point of law has been referred to the House of Lords or the Supreme Court under section 113C(4) of AA 1955 or AFA 1955 or section 71AC(4) of NDA 1957, and
- (b) neither the House of Lords nor the Supreme Court has exercised its powers under that subsection,

section 274(4) and (5) of AFA 2006 apply as if the point of law had been referred under section 274(1).

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**Marginal Citations**

- M1** [Section 273\(7\)](#) of AFA 2006 is substituted by the [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [section 145](#) and Schedule 25, paragraphs 10 and 28.

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, Section 129.